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No. 80-1745

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

F. W. WOOLWORTH CO.,
Appellant,

v.

TAXATION AND REVENUE DEPARTMENT OF THE STATE OF NEW MEXICO,
Appellee.

Appeal from the Supreme Court of New Mexico

JOINT APPENDIX

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Appeal Docketed April 17, 1981

Probable Jurisdiction Noted October 5, 1981

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RELEVANT DOCKET ENTRIES

COURT OF APPEALS OF NEW MEXICO

Docket No. 3954

F. W. Woolworth Co., a New York corporation,
Appellant,

vs.

Bureau of Revenue, State of New Mexico,
Appellee.

Date—Proceedings
1979

Jan. 31—Complaint on Appeal

Mar. 2—Transcripts—3 vols—1 ea.

Apr. 16—Appellant's request for oral argument

16—Appellant's letter advising he will not be filing a Brief in Chief

20—Court accepts Memorandum referred to in above letter as B.C. A.B. due 30 days from today

May 18—Motion for Additional Time to file A.B. thru 6-7-79—Granted

June 7—Motion to extend time for filing Answer Brief—Granted thru 6-11-79

11—Appellee's Answer Brief W/Certificate of Service

11—Request for Oral Argument

21—Motion for extention of time R.B.—Granted thru 7-2-79

July 2—Appellant's Reply Brief W/Certificate of Service

Sept. 6—Oral Argument calendar mailed to counsel—set for 10-15-79

Oct. 14—OA vacated and reset for Oct. 22

22—Submission Order

Dec. 4—Opinion (R) Wa-W-Hz

20—Motion for extension of time for filing Motion for rehearing

20—Motion for Rehearing (DENIED)

1980

Jan. 10—Notice of Certiorari

11—Opinion mailed to U.S. Law Week and Bar Bull.

Feb. 8—Sp. Ct. Order granting certiorari

8—Writ of Certiorari

1981

Jan. 19—Opinion on Cert Reverse

Feb. 4—Final order of Sup Ct on 1/30/81

6—Mandate

Mar. 30—Notice of Appeal to the U.S. Supreme Court

SUPREME COURT OF NEW MEXICO

Docket No. 12876

TAXATION AND REVENUE DEPARTMENT OF THE STATE OF NEW MEXICO,
Petitioner,

vs.

F. W. WOOLWORTH COMPANY, a New York corporation,
Respondent.

Date—Proceedings

1980

January 9—Petition for Writ of Certiorari
Notice to Court of Appeals

14—Motion Multistate Tax Commission for Permission to file Amicus Curiae Brief in Support of Petition
Amicus Curiae Brief

February 8—Order granting Petition
Writ of Certiorari

March 11—Brief of Respondent Taxpayer

27—Motion to file Brief and Request for Oral Argument

April 10—Order granting motion to file brief; denying request for oral argument—4/25/ to file brief

25—Supplemental Brief of Petitioner

1981

January 19—Opinion (Easley/S-F—Payne dissenting) (no written dissent)
Order Reversing Court of Appeals with directions that Judgment be entered for the Department

30—Order making Order of January 19 final
Letter requesting publication of C.O.A. opinion

March 30—Notice of Appeal to US Supreme Court
Affidavit of Service

December 28, 1977

Commissioner
New Mexico Bureau of Revenue
P. O. Box 630
Santa Fe, New Mexico 87503

Re: F. W. Woolworth Co.—Assessment Protest
Fiscal Year Ended January 31, 1977
New Mexico Corporation Income Tax Return
I. D. No. 01-924756-00

Dear Sir:

We are in receipt of your assessment of December 9, 1977. You take exception to our exclusion of dividend income and non-business interest income from apportionable business income; under the theoretical presumption that all income-producing activities generate business income, unless proved otherwise. It is our Company's position that such income is non-business income not subject to apportionment, for the following reasons:

A) *Dividend Income*

All dividend income is received from foreign subsidiaries, which engage in business exclusively in foreign countries; and have no connection whatsoever with the State of New Mexico. These foreign subsidiaries are functionally and organizationally separate from and independent of the parent company's operation in the United States. They have their own management, and do their own purchasing from sources within their own country of operation. The foreign subsidiaries establish their own pricing, determine their own merchandise mix and marketing techniques; perform their own accounting, and do their own advertising.

The foreign subsidiaries in question are not a source of materials or inventory for the parent company;

nor do they serve as a market for the parent company's products. The activities of the parent company in New Mexico and the United States contribute nothing to the value of, or the income from the foreign subsidiaries; just as the activities of the foreign subsidiaries contribute nothing to the earnings from the parent company's business in the United States or New Mexico.

Dividend income from our foreign subsidiaries is in reality investment income eminating from what is, for all practical purposes, a passive investment. This unique nature of the parent company's relationship with our foreign subsidiaries was recognized by the U.S. Tax Court in *F. W. Woolworth Co. v. Commissioner of Internal Revenue,* (54 T.C. 118, June 15, 1970), and it applies with equal credence as the basis for allocating dividend income out of New Mexico due to its non-business nature.

B) *Non-Business Interest Income*

Allocated non-business income is entirely of an intercompany nature, and as such does not arise from, and is not in any way related to the regular business operations of the F. W. Woolworth Co. in New Mexico. Interest income in the amount of $1,183,625 has been included in apportionable income as it is related to our business activities.

It is important to note that, in auditing F. W. Woolworth Co.'s New Mexico Income Tax Returns for the calendar years 1968, 1969 and 1970, the Multi-State Tax Commission concurred in our exclusion of dividend income from income apportionable to New Mexico. In addition, under the provisions of the Uniform Division of Income for Tax Purposes Act, as adopted by New Mevico, dividends and interest are allocable to the corporation's commercial domicile, which is outside New Mexico.

We trust that the above explanation of dividend and interest income for the fiscal year ended January 31, 1977 will justify the exclusion of these items from apportionable business income.

Very truly yours,

F. W. Woolworth Co.

/s/ J. J. Feeley
J. J. Feeley
Tax Manager

IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

F. W. Woolworth Co., a New York corporation,
Appellant,

vs.

Bureau of Revenue, State of New Mexico,
Appellee.

COMPLAINT ON APPEAL

[filed Jan. 31, 1979]

Comes Now F. W. Woolworth Co., a New York corporation, by and through its attorney and for its complaint on appeal states and alleges as follows:

1. This appeal is taken from the Decision and Order of the Commissioner of Revenue made "in the matter of the tax liability of F. W. Woolworth Co., Bureau of Revenue I. D. No. 002154 under Assessment No. 224952 for New Mexico income tax for the company's fiscal year ending January 31, 1977", pursuant to and in compliance with the Tax Administration Act, Sec. 7-1-25 N.M.S.A. 1978, a copy of which Decision and Order is attached hereto as Exhibit A and incorporated herein by reference as though set forth in detail.

2. The Decision and Order (Exhibit A) is arbitrary, capricious, and an abuse of discretion, is not supported by substantial evidence in the record and is not in accordance with law.

3. Arrangement has been made with the Commissioner or his delegate for the preparation of the necessary transcripts of the record on which this appeal depends, pursuant to and in accordance with Sec. 7-1-25B. of N.M.S.A. 1978.

WHEREFORE, F. W. Woolworth Co., a New York corporation, prays that this Court set aside the Decision and Order of the Commissioner of Revenue hereinabove described, and grant appellant its costs and expenses incurred in connection with this appeal.

/s/ JOHN P. DWYER
John P. Dwyer
Attorney for Appellant
1210 Bank of New Mexico Building
Albuquerque, New Mexico 87102
(505) 247 9586

CERTIFICATE

I hereby certify that I caused a true copy of this Complaint on Appeal to be mailed to the Commissioner of Revenue, State of New Mexico, Capitol Building, Santa Fe, New Mexico 87501, this 30th day of January, 1979.

/s/ JOHN P. DWYER
John P. Dwyer

TRANSCRIPT OF PROCEEDINGS BEFORE THE DEPARTMENT OF TAXATION AND REVENUE

Revenue Division

[p. 41]

* * * * * * * * * * *

MR. OWENS: Thank you. Before Mr. Kopel gives his opening statement, I am—I recall the protest also spoke of interest income which you did not discuss. Is that an issue?

MR. BRAY: We would concede the interest income as being part of the regular trade of business of Woolworth. You are quite correct, I had noticed that when Mr. Kopel handed me that schedule. We would not make an issue of that at this time.

* * * * * * * * * * *

[p. 43] [MR. KOPEL:] Is that an issue still or not?

MR. BRAY: Well, the foreign exchange gain is a consequence of hedging—a hedging transaction designed to protect the investment.

In England because of the fertility [sic] of the pound, that is, against the dollar, it seems to me that logically that it would follow the characterization of the dividend income.

MR. KOPEL: So, it is still at issue?

MR. BRAY: Yes. I will distinguish that from the interest.

* * * * * * * * * * *

[p. 52]

John J. Feeley

was called as a witness by the protestant, and having been first duly sworn, testified upon his oath as follows, to-wit:

DIRECT EXAMINATION

BY MR. BRAY:

Q. Mr. Feeley, would you state your position with the company once again for the record?

A. Tax Manager for F. W. Woolworth.

Q. How long have you been with the company?
A. Ten years.

Q. In your position as Tax Manager are you required to become familiar with all aspects of the company's operations?
A. Yes, I have become generally familiar with the total operations of the company.

Q. Would you describe the operations, the nature of the business performed by the New York company, F. W. Woolworth Company?
A. Well, F. W. Woolworth Company is a retailer and doing business in all of the states and in Puerto Rico and the Virgin Islands and conducts business under the Woolworth name and under the name of Woolco Department Stores.

Q. Could you give us an idea of the essential management [p. 53] decisions that have to be made in a business of this sort to conduct a merchandising retail outlet operation?
A. Well, generally speaking the merchandising is an important aspect—a most important aspect—of our operations. The management has to be able to determine the type and quantity of merchandise to buy which they can reasonably anticipate the public will purchase, and in addition management must select sites and conduct a research and market studies and market surveys as to the probable profitable locations of the retail stores.

It has to be able to generate and decide upon the type of financing necessary to stop and equip the stores with merchandise and also the necessary fixtures and leasehold improvements.

It has to establish operating procedures and controls over cash and establish policies with regard to personnel and to representations made to the public.

It has to generate adequate accounting records to properly control business and importantly, of course, they must make the public aware of their operations by advertising and advertising geared to the country as a whole and also geared to the various sections of the country.

Q. Recently a well-known retailer, W. T. Grant, went into bankruptcy. Do you have any thoughts on what the principal reason for that was?

[p. 54] MR. KOPEL: Objection, Your Honor, I don't know that that has any relevancy on the issue before the administrative hearing with respect to taxes for this taxpayer. If he would lay a foundation——

MR. BRAY: I am merely attempting to show one of the important elements of a merchandising operation which was inadequately considered by the W. T. Grant—it is not an important thing——

MR. KOPEL: Well, unless counsel can show the witness' expert knowledge or intimate knowledge with respect to the W. T. Grant operation and what took place with respect to W. T. Grant and why this occurred, I would—I think that the testimony is improper and has nothing to do with this particular hearing here.

I don't think that the witness could even qualify for that. But I would be glad to listen to it.

MR. BRAY: I'll withdraw it. It's a matter of background, really.

Q. (Mr. Bray continuing.) Now, you mentioned merchandising next and site selection. What is involved in site selection? How were these stores—how were these locations selected and how was the ownership taken?

A. Well, the sites are selected based upon the probable traffic that will be passing a store or being in the neighborhood of a store or the community to be served.

[p. 55] It is based on the market studies and it is also based upon the cost of the store area and the number of—the cost per square foot of selling area. It has to be such that the management in opening a store there can presume that it would be given an estimated sale volume and the occupancy cost of that particular location would permit them to earn a reasonable profit on the investment.

Q. I believe you also mentioned advertising and cash control and inventory control?

A. These are essential, yes.

Q. Now, with respect to the English and German subsidiaries, who makes the decision for seeing to the merchandise, site selection, advertising and accounting control?

A. Each subsidiary performs these functions autonomously and independently of the parent company.

Q. Are you aware of any instances where prior to the selection of a store site by the management of either the foreign subsidiaries where approval of this site selection was submitted to management of the New York company?

A. No, I do not.

Q. Would you say that there is any difference in tastes among the buying public, buying publics of England and Germany, as compared to the U. S.?

A. Well, there definitely are different tastes and different products that are sold in the stores in those [p. 56] countries, and there is also a different type of store.

For example, in England, many of the Woolworth stores have a large restaurant and cafeteria and in addition they have food halls, supermarket type of floors or portions of the store.

[Q.] So, you are saying in England there is what we would call a supermarket that is called a food hall over there, and that is something done in England?

A. This is done in England, in the Woolworth stores in England, and it is not done in the United States.

Q. What about Germany, can you give me an idea of significant inventory items which are different?

A. The German stores' inventories are heavily weighed towards soft goods such as clothing, coats, dresses, and so on.

They have no, or virtually, no operations in selling food to the public. They have a different advertising, and incidentally, they do very, very little advertising—no national radio or newspaper advertising—is carried on.

Q. Sticking with the merchandise difference, are you aware of U. S. management participating in the English—the decision in England to retail a food hall supermarket type of operation or to advise soft goods in Germany?

A. No, they figure that their operations are independent, autonomous. Their operations are conducted by German nationals [p. 57] and English nationals. We don't rotate personnel or train personnel to operate stores in those countries. There is no exchange of personnel.

Q. Are there any inter-company sales of inventory?

A. None.

Q. Could you just give me a general idea of where the inventory is derived by the various subsidiaries?

A. A high percentage of the inventory purchases by the various subsidiaries are made within their own particular country.

In addition, imports are made from the Orient and various other locations around the globe. A very high percentage of the purchases of the English company and the German company and the Mexican company and the Canadian company are from their own national sources.

Q. With respect to either the national source or with respect to imports into Germany or England are there any coordinated buying functions?

For example, if the U. S. stores require an item from the Orient and similar items are required in the stores in Germany and England, is there a central buying office that is consulted for these purchases that are made to present a more massive buying function to the outside world?

A. Well, that would appear to be economically feasible but it hasn't worked out with respect to the Woolworth Company.

[p. 58] Our buyers go to their suppliers independently and at different times of the year to make their purchases. There is no coordination, there is no pooling of the parent company buying with the German companies buying or the English companies buying.

I suspect there may even be some competition in some places with the other, with our subsidiaries, in the buying of the product.

Q. Could you tell me about accounting? Is there a central accounting office that accounts for both the U. S. operations and the subsidiaries operations in England and Germany?

A. Each subsidiary has a complete accounting department and a financial staff.

Q. Now, you are the Tax Manager for Woolworth, do you review the German tax returns and the English tax returns and consult with them on decisions affecting taxes?

A. No, I do not. I do write to them from time to time requesting tax receipts necessary for establishing our United States foreign tax credit.

In that connection they may furnish me with copies or calculations of their income tax computations.

Q. What about advertising? You mentioned Germany does very little advertising. What about England?

A. England is completely autonomous in advertising [p. 59] and there is a very high degree of local advertising in England as opposed to the United States where we have

national or large regional programs. It's uncoordinated. They write their own copy and buy their own time et cetera.

Q. Turning to personnel, both at the store manager level, and the executive level, is there any management school? Is there any training program that is central to transmit the Woolworth idea of merchandising such as it may be to the foreign subsidiaries?

A. No. They proceed on their own with their own programs, either formal or informal. They develop their own managers and instruct them in their methods of operation.

Q. What about the Chief Executive of the English and German subsidiaries? Are these—could you give me their names and tell me whether or not they hold a position as an officer of the New York company?

A. The German company manager's name is Mr. Bruno Weiss. He is the managing director.

[Q.] Is he the chief operating officer?

A. Yes. At present under the German law there are required to be two managing directors. The second managing director is a Mr. Peter Ellegast.

Q. Are these two individuals German nationals?

A. They are German nationals.

Q. Are they an officer in the New York company as well [p. 60] as an officer of the German company?

A. No.

Q. What about England, who is the chief operating officer in England?

A. A Mr. Owen.

Q. And is he a national?

A. He is an English national.

Q. How long has he been the chief operating officer of the English company, do you know offhand?

A. At least ten years. I am sorry, I don't know how far back he goes.

Q. Are there any other officers of the English company who are officers of the New York company?
A. No. Mr. Owen is a member of the Board of Directors of the New York company.

Q. What percentage of stock does the New York company own in the English company?
A. Fifty-two point seven.

Q. Who owns the remaining shares?
A. It's traded on the London Stock Exchange. It's owned by the public.

Q. Now, Mr. Feeley, could you tell me how these companies got started, financially? Tell me first of all when the New York company was formed and then when the English company was formed and how the English company has been capitalized?
[p. 61] A. The present company was formed in December—do you want that?

Q. I think just the general——
A. I would say in 1911, I think.

Q. And the English company?
A. At approximately the same time.

Q. What would you say the English company is worth now, or how is it carried on the books? Can you give me an approximate valuation?
A. The book valuation is upwards of thirty million dollars.

Q. What about the fair market value as evidenced by the shares traded on the London Stock Exchange?
A. I don't have that figure for you. I can get it for you.

Q. You mentioned thirty million dollars as book value. How much of that represents investment by the New York company in the English company?

A. The initial investment was in the neighborhood of sixty-four thousand dollars in the 1900's.

Q. Is there a method of accounting which accounts for the fact that it is now carried as some thirty million dollars on the books?

A. Yes. It was initially carried on the books up to a certain point using the equity method of accounting, and [p. 62] from that point forward the equity method wasn't used until after the amount of thirty million dollars had been outstanding for some time as far as the bookkeeping treatment was concerned.

Q. Let me ask the question another way. How much of that thirty million dollars represents advances by the New York parent company to the English company?

A. Zero.

Q. Sixty or seventy——

A. Advances, you used the word advances?

Q. I am talking about the——

A. The initial seed capital was approximately sixty-four thousand dollars.

Q. That's the only amount that has been advanced by the New York company to this subsidiary of that thirty million dollars? The rest represents the reinvestment by itself?

A. The bulk of that represents reinvestment.

Q. What about the German company?

A. The reason I hesitate going on answering is that in the earlier years there may have been some advances that were repaid, but of the thirty million dollars that is now existing on the record, I would say that that is the result of bootstrapping.

Q. What about the German company? Do you recall approximately what the book value of that company is?

[p. 63] A. Well—I do not. I would have to refer to a schedule.

Q. Well, let me ask you this, would you say that the—essentially the same reasoning applies that is to say that the German company has primarily relied on its reinvestment of its own earnings and this value has carried on the books, either that or the fair market value, is derived substantially, principally, from the earning of the German company as opposed to the advances made by the U. S. company?

A. The German company was completely written off at the end of World War II, and began its reconstruction with a very modest advance from the parent company, which was probably repaid, and it continued to grow based upon the reinvestment of their earnings. Again, another example of bootstrapping.

Q. Now, I would like to without repeating every question if I may ask a summary question concerning the Canadian and the Mexican subsidiaries, we talked about decisions concerning merchandise mix, site selection, advertising, accounting, training of personnel, and of those items would you say that there is a similarity between the relationship of the U. S. parent to Canada as there is to the German and the English subsidiaries to the extent to which these things are decentralized?

A. Yes, there is a distinct similarity or philosophy involved in the ownership of these companies.

[p. 64] MR. BRAY: I have no further questions of the witness at this time, Mr. Owens.

MR. OWENS: Let's take a ten minute break.

(THEREUPON, the hearing was in recess.)

CROSS EXAMINATION

BY MR. KOPEL:

Q. Mr. Feeley, you stated that you have been with Woolworths about ten years, sir?

A. Yes.

Q. What did you do before you went to Woolworths, sir?
A. I was with the State of Illinois Department of Revenue.

Q. For how long?
A. For five years.

Q. Have you always been the tax manager with the F. W. Woolworth Company, sir, for the ten-year period?
A. I was Assistant Tax Manager and was promoted to Tax Manager.

Q. How long have you been the Tax Manager?
A. I would say five years.

Q. You don't sit on the Board of Directors of the F. W. Woolworth Company do you?
A. No.

Q. Do you see the minutes of the meetings of the Board [p. 65] of Directors?
A. Yes.

Q. You are privy to that information?
A. Yes.

Q. You testified that Woolworths is a retailer. Expand on that a little bit. What is the business of the Woolworth Company in the United States?
A. The business of buying merchandise, maintaining retail stores in which merchandise that has been purchased for resale is displayed.

Q. So, merchandise is purchased at wholesale and sold at retail?
A. It is purchased from suppliers at various levels, perhaps direct from the manufacturer, from jobbers, importers, et cetera.

Q. And what is sold through these stores? What kinds of merchandise are we talking about, sir? Give us a broad category if you can for us?
A. You can start—first of all there are various types of classes of stores depending on the size of the community.

Q. Let's talk about the Woolworth. Let's not talk about Woolco yet. Let's just talk about Woolworths.

Let me help you, for example, you have soft goods, do you not, clothing, and things of that nature, men and womens' clothing?

[p. 66] A. They have men and womens' underwear, shirts, dresses, socks.

Q. Appliances?

A. Small appliances.

Q. Pots and pans.

A. Pots and pans.

Q. Flowers, plants?

A. Yes, hardware and toasters.

Q. If I were to say it's like what we used to call when I was a youngster a dime-store type stuff, initially, Woolworth, United, Kresges—this is the type of thing that we are talking about?

A. Absolutely.

Q. You have a store downtown Santa Fe on the Plaza do you not?

A. Yes.

Q. Have you been in that store?

A. No, I haven't been out that way.

Q. Now, Woolco is the discount operation is it not?

A. Yes.

Q. Like K-Mart?

A. Yes.

Q. And the merchandise sold through Woolco, then, is a much broader range of merchandise is it not?

A. Yes.

[p. 67] Q. When was Woolco formed, the discount operation?

A. In 1962, I think.

Q. Now, the Canadian operation, do Woolworth and Woolco sell anything different? I am not talking now the individual items of merchandise that are tooled to the individual tastes for the Canadians or for the Mexicans or the Germans or the English, other than the food that you talked about, basically are the Canadian operations the same as the American operation, that you are buying materials at various levels and then reselling it retail?

A. That's right.

Q. Basically, the same kind of business, isn't it?

A. That's right, the same kind of business.

Q. Is that true in Mexico, too?

A. Yes.

Q. And England?

A. Yes.

Q. And in Germany?

A. Yes.

Q. Okay. Now, you indicated in your direct examination that some of the stores in England or in Germany—especially in England you have what is called a food hall, where they have food and there is a cafeteria in conjunction with whereas in Germany you don't have it?

A. That's right.

[p. 68] Q. Is it not true that food is sold out of the United States stores?

A. We have counters here.

Q. Yes, they have counters where they sell food do they not?

A. That's true.

Q. And they sell candies and they sell all kinds of food items do they not in the United States stores?

A. Yes, concentrating principally on items such as crackers, candies, cookies that nature as opposed to the general range of a supermarket where you have all—meats and canned goods.

Q. Does Woolworth operate in Canada under the Woolworth name, sir?

A. Yes.

Q. And in Mexico?

A. Yes.

Q. And in Germany?

A. Yes.

Q. And in England?

A. Yes.

Q. And is the Woolco name used in all four of the countries, also?

A. No.

Q. In England?

[p. 69] A. Yes.

Q. In Mexico?

A. No.

Q. In Canada?

A. Yes.

Q. In Germany?

A. No.

Q. So, you don't have a discount type of operation in Mexico and Germany as you say?

A. No.

Q. But you do have in England and in Canada?

A. Yes.

Q. Is it not true that many of the discount operations today do operate food operations in conjunction with the discount merchandise?

A. I believe that's true, yes.

Q. As a matter of fact, if I wanted to go downtown Santa Fe and eat my lunch at your F. W. Woolworth store I could get lunch there?

A. Absolutely.

Q. And I can get that lunch in many stores throughout the country in Woolworths and in England and in Canada can I not?

A. Yes.

Q. Let's talk about the Canadian operation for a minute if we can. That's owned a hundred percent by Woolworths? [p. 70] A. Correct.

Q. When I say Woolworths, that's the taxpayer.

A. Right.

Q. Okay. Who controls the Board of Directors of the Canadian operation? Who elects the Board of Directors?

A. It is elected by the taxpayer.

Q. Woolworths has all of the seats on the Board of Directors of the Canadian subsidiary does it not?

A. I am not sure that I know what you mean when you say all of the seats. Do you mean being a hundred percent stockholder it elects the Board of Directors?

Q. Yes, elects the Board of Directors, right?

A. Right.

Q. Are these members of the Board of Directors the same people who sit on the parent, Woolworth?

A. Some of them are.

Q. How large is the Board of Directors of Woolworths, the taxpayer, how many member Board is it?

A. I am embarrassed to say that I can't recall.

Q. Approximately, sir?
A. Excuse me a moment, may I consult with Mr. Bray?

Q. Sure.
A. It's a large number—I am sorry but——

Q. It is over twelve isn't it and under twenty? Something around fifteen or eighteen, something in that area?
[p. 71] A. Right.

Q. How large is the Board of Directors of the Canadian subsidiary?
A. It is my impression that it is considerably smaller, but I have never focused on that.

Q. How many members of the Board of Directors of the taxpayer, Woolworths, sit on the Canadian subsidiary Board?
A. At least one.

Q. At least one?
A. Yes.

Q. But they control the Board of Directors because they own one hundred percent of the stock?
A. Yes.

Q. How many stores do you have in Canada?
A. Approximately, I would say about five hundred.

Q. You would say approximately and if you don't know——
A. I don't know. I don't have that information at my fingertips.

Q. All right. The officers of the Canadian company are appointed by the Board of Directors of the parent company are they not?
A. Yes.

Q. And are they the same officers that are the officers of the taxpayer, Woolworths?
A. No.

[p. 72] Q. They are different officers?
A. Yes.

Q. Are there any officers who are officers of Woolworths that are officers of the Canadian company to your knowledge?
A. Yes, at least one.

Q. Is that the managing director of the company?
A. Yes, I believe it is.

Q. The Canadian financial statement is a consolidated statement filed with the parent is it not, Woolworths?
A. Yes.

Q. And has been since, what, since 1960 or so, is that your understanding?
A. It has been as long as I have been with Woolworths.

Q. That's ten years, you were there in '68?
A. Yes, I would say at least ten years prior.

Q. It is not true that it is a policy of Woolworths that the goods sold in its stores and those of the foreign subsidiaries should be purchased in the country in which the store is located insofar as that is possible?
A. It is the merchandising concept, yes.

Q. So, that it is just good business to attempt to buy Canadian merchandise from a Canadian source and Mexico merchandise from a Mexican source and German merchandise from a German source, and English merchandise from an English source?
A. It has proven to be good business for us, yes.

[p. 73] Q. Now, you testified on direct that you do buy from the Orient as most people do today because of the cost involved, but it is still the policy to attempt to buy from the country in which the store is located to the best of the manager's ability, is it not?
A. That's true.

Q. Since the Board of Directors of the Canadian subsidiary is elected by the taxpayer, Woolworth, it is a fair statement to say that they control the financing and the loans and the borrowings for that Canadian subsidiary?

A. Well, they have the right to control.

Q. Well, if the officer-manager of the Canadian sub wants to make a decision with respect to some of the things that you were talking about for Germany and England—we were talking about the type or quality of merchandise to buy, site selection, research, operating procedures, personnel, in the case of Canada that is much more closely controlled by Woolworths in New York is it not?

A. There is, in the initial stages of the development of the Canadian company, it was more closely controlled, but as the company has grown it has been able to stand on its own feet to a greater extent.

Q. When was that change positive, do you recall?

A. It has been a gradual change.

Q. So, as the company matured more and more leeway was [p. 74] given to make their own decisions, is what you are saying?

A. As they demonstrated the ability.

Q. But the major decision, for example, if the Canadian sub wanted to go out and borrow a million dollars it wouldn't do that without the approval of Woolworth, the taxpayer?

A. Well, the Canadian financial people have the right to finance their day-to-day operations and I doubt that they would be required to at the level of a million dollars to seek the permission of the parent company.

If there was really substantial borrowings going on, I am sure the Canadians before borrowing it would obtain permission of the parent company.

Q. Who provides the legal advice, service, to the Canadian subsidiary, if you know, sir?

A. I don't know. They have their own Canadian counsel.

Q. Is there a planning aspect to the overall management of the F. W. Woolworth Company, future planning for—a department or like that is what I am asking you?

A. There isn't a department in existence at the present time that has that defined function. But obviously there has been planning in the management of the company.

Q. That's under the control of the Board of Directors, then? Is there a Vice President for planning or to whom is that responsibility delegated to?

A. There are various aspects of the planning that are [p. 75] carried by various officers, but we don't have a planning department as such.

Q. Who handles the investments of Woolworths' funds that are a part of its cash flow at any particular time, sir?

A. In the event that we have a surplus cash fund, on a temporary basis, it will be invested in the regular course of business in short term bankers' acceptance——

Q. Commercial paper?

A. Commercial paper and treasury notes and things like that.

Q. And the Treasurer is responsible for that?

A. Right.

Q. Is that an on-going activity of the taxpayer at the present time?

A. Yes, they continue from time to time to do that. Yes, I would say that they try to keep the surplus funds invested.

Q. How does money flow from the Canadian subsidiary to the parent?

A. Dividends.

Q. Is that the only way?

A. That's the only way.

Q. What was the investment in the Canadian subsidiary, if you know?

A. It was seventy-five thousand dollars in stock plus [p. 76] three million one hundred twenty-five thousand dollars in paid-in capital.

Q. The parent loaned money to the Canadian subsidiary from time to time for getting on its feet?

A. In the initial stages of development I would believe that would be the case. I don't know that was the case.

Q. Well, you talked about advances with respect to England and Germany and I assume that when you say advances you mean loans do you not?

A. Yes.

Q. Okay. It's normal for a parent to loan money to its subs is it not in the normal course of business?

A. Yes.

Q. If a sub was going out and borrowing money it would consult with the parent first to see if it could borrow money from the parent before it went outside the corporation, would it not?

A. It would depend on many circumstances. Normally, I would think that substantial borrowing, an unusual amount, would necessitate the checking with the principal stockholders or the Board of Directors.

Q. Okay. Let's talk about the Mexican company. When did it commence operations, approximately?

A. In 1956—I am going to say in '56.

Q. That's a fairly small operation?

[p. 77] A. Yes, that's a small operation.

Q. Compared to the English, German, and Canadian?

A. Yes.

Q. How many stores, just roughly?

A. About twelve.

Q. Again, that's one hundred percent owned?
A. Yes.

Q. Rather than me going through all of these questions, of course I will talk about some of them, but are there any major differences between the operation of the Canadian subsidiary and the Mexican subsidiary by the parent?

Let me rephrase the question. I don't think I stated that clearly.

I have asked you a number of questions, Mr. Feeley, regarding the relationship between the Canadian subsidiary and the parent and how it operates.

Are there any differences, basic differences, with respect to the Mexican operation?
A. No, just smaller.

Q. Again, the parent nominates all of the Board of Directors and some of the directors of Woolworth, the taxpayer, sit on the Board of the Mexican subsidiary, do they not?
A. Yes.

Q. Is this a fair statement, the active management of the Mexican company is a general manager whose duties and [p. 78] functions are similar to those of a district manager in the United States operation. Is that a fair statement, sir?
A. It may have been in one point in time.

Q. Is it today?
A. I don't believe so today.

Q. Why not?
A. Again, the subsidiary has been doing business for quite some time and the people who are operating it are given greater leeway at this time.

Q. So, that there is local supervision of purchasing and advertising and there may be local financing is what you are saying?
A. Yes.

Q. Some of the things that you referred to with respect to Germany and England?

A. Yes.

Q. Apparently what you are saying, Mr. Feeley, is that it has been a management policy of the parent to attempt to delegate responsibility to the subsidiary management commensurate with their abilities to operate effectively and profitably in those countries, is that a fair statement?

A. Yes, it is implied that you can derive a policy from that statement.

Q. So, if the Mexican subsidiary decides it wants to expand on X Street or Y town after careful research or marketing [p. 79] analysis and costs and so forth, that's left up to them as long as, on paper at least, the proposal, proposition, presented to the Board is acceptable, is that what you are saying, Mr. Feeley?

A. Yes.

Q. And they are better able in Mexico City to make that decision than the Board of Directors of the taxpayer sitting in New York?

A. That's correct.

Q. Let's talk about the German operation, now. Again, that's call Woolworth or Woolco?

A. F. W. Woolworth Co., G.m.b.H.

Q. When did that operation begin, approximately?

A. It was prior to World War II.

Q. You testified that they wrote it off after the war?

A. Yes, and it started after the war.

Q. Started after the war?

A. Yes.

Q. You testified that there was money advanced. Let's talk about that for a moment—to the German operation—how much was advanced, then, do you have any idea?

A. I believe it was four hundred thousand dollars.

Q. When you say advanced, again, that is a loan?
A. That's true.

Q. At interest, I presume?
[p. 80] A. I am not certain.

MR. OWENS: Since when?

MR. KOPEL: This was since World War II, Mr. Owens.
Q. (Mr. Kopel continuing.) Do you want to take a moment, counsel?

MR. BRAY: I am just jogging his memory——
A. I am not certain——

Q. (Mr. Kopel continuing.) Of the four hundred thousand?
A. Whether the four hundred thousand was a loan or a contribution in capital.

Q. Okay. It was money flowing from the parent to the subsidiary?
A. Yes.

Q. Are you familiar with the books and records since this goes back a long time before you came into the company with respect to other financial transactions between the German subsidiary operation and the parent with respect to any loans or type of contributions of capital, sir?
A. I do know that the parent company has consistently reinvested the dividends, a portion of the dividends, received from the German subsidiary in the German company, and steadily built-up its investment in Germany at that time.

Q. Is there some legal requirement that it do so?
A. No.

Q. The German subsidiary is one hundred percent owned
[p. 81] is it not?
A. That's correct.

Q. I have a statement here and do you know if this is true or not, "Because of German tax laws dividends declared by the German companies are loaned back by Woolworth, evidenced by notes, and retained by those subsidiaries."

Do you have any knowledge of that statement, is that true or not?

A. I think——

Q. I am reading to you from the *F. W. Woolworth vs. Director of Taxation*, which is a New Jersey case. That's a statement in this particular case. It's 45 N.J. 466, a 1965 decision of the Supreme Court of New Jersey.

Do you have knowledge of that at all, sir?

A. It doesn't sound accurate to me.

Q. Okay. Maybe the law has been changed since this decision—after all that's thirteen years ago.

Let's talk about the Board of Directors of the German subsidiary. How many people on that Board, if you know? If you don't know tell us approximately?

A. I don't know. I don't know the organization. I don't believe they have a Board of Directors, as such.

Q. I see. How about the officers? You have mentioned that there are two managing——

A. That's right, the managing directors they call them.

[p. 82] Q. Who selects those managing directors?

A. The parent company, the taxpayer.

Q. We have been talking about dividends which is really the issue of all of this. Who determines when dividends will be issued and the amount of the dividends to be paid by the subsidiaries to the parent?

A. That's a determination made by force of the German tax law and it was more economical up until 1975, I believe.

The German tax laws were geared to providing extensive —for not over-heating their economy. Therefore, they provided a lower corporation income tax rate on those earnings when they were distributed to the shareholders than if those earnings were not distributed as if they were reinvested.

So, the amount of the dividends were virtually established or was determined on the basis of the profit of the company.

Q. But the company could still determine to reinvest and build up its investment? It didn't have to pay it out, so, who made that decision, then?

A. That is made by the managing director.

Q. In conjunction with whom?

A. In conjunction with the parent company.

Q. So, in point of fact and with respect to the Canadian and the Mexican subsidiary, the Board of Directors of both of those companies, make the decision as to dividends, obviously?

[p. 83] A. That's right.

Q. So, in point of fact, then, with respect to these three operations the actual dividends which are paid out by the subsidiaries are determined by the parent, is that true?

A. Yes.

Q. Where are the parent's Board of Directors meetings held?

A. In New York.

Q. That's where the home office is?

A. That's correct, yes.

Q. In New York, and meetings are held there?

A. Yes.

Q. Who attends those Board of Directors meetings other than the Board, itself, do other people come in at that time?

A. From time to time outsiders are invited or principal managing directors of the foreign subsidiaries.

Q. That was my question. Is it not true that the managing directors of the foreign subsidiaries attend the Board of Directors meetings of the parent?

A. Well, they may be invited. They do not regularly attend or they may be excused for a portion of the meeting.

Q. Let me ask the question another way, sir. Do managing directors of the foreign subsidiaries come to New York to meet with the parent on occasion?

A. On occasion they do.

[p. 84] Q. How often would you say, once a quarter?

A. No. I would say once a year. It would be on a rare occasion, once a year.

Q. Is there other methods of communication between the parties?

A. Of course.

Q. Telephone?

A. Yes.

Q. Correspondence?

A. Yes.

Q. Do you have direct lines to these subsidiaries?

A. No.

Q. Do you have a teletype?

A. Teletype.

Q. Teletype in your office and in their office for direct communication?

A. We have——

Q. Tele-prompter or tele-copier?

A. We have a teletype, which as I understand it is over the R.C.A. radio lines.

Q. Where messages can be typed back and forth?

A. Yes, typed and addressed to the various cable addresses.

Q. Back and forth?
A. Yes.

[p. 85] Q. Is there a policy of the parent that all of the managers of all of the operations get together periodically to discuss the overall Woolworth operations?
A. No.

Q. They never get together and talk together about where the company is going or what it is doing or where it should be tomorrow or in ten years from today? Planning for future programs or for future expansion?
A. There hasn't been that.

Q. How many officers does Woolworth have?
A. The parent company has I would guess fifteen officers.

Q. Do these officers travel from time to time to confer with the subsidiary managing directors in Canada and in Mexico and in England and in Germany?
A. The Chief Executive Officer would on occasion travel to Canada, England, or to Germany to confer with the managers there. The other officers may, but the President does on occasion. It is hard to discern any pattern of regular monthly visits or quarterly visits.

Q. Well, is it not true that when you have far-flung operations sometimes an exchange of information becomes difficult? One of the ways that competent management of large business entities today tends to become more profitable is to have a healthy exchange of information? That's a pretty broad statement, but that's true?
[p. 86] A. Yes.
Q. Then, you attempt in large companies such as Woolworth and Woolco to gain the benefit of knowledge from your subsidiaries——

The parent attempts to gain knowledge from the subsidiaries that it can use in its operations, does it not?

A. The parent company's personnel and the subsidiary personnel will exchange information from time to time.

Q. On a fairly regular basis won't they, or at least if they have innovative ideas?

A. Yes, I would hope so.

Q. So, even though as you have indicated the German operation is fairly independent, Mr. Feeley, with respect to many areas that you have cited to us——

A. Yes, sir.

Q. ——nevertheless that does not mean that there isn't an exchange of information between people who make those decisions in Germany and those who make those decisions in the United States, is that not correct?

A. That's true.

Q. That's one of the way, hopefully, the company will have more on the bottom line isn't it?

A. Yes.

Q. Apparently England and Germany are doing something correctly since their bottom line has been better, on your [p. 87] testimony, than the American market? Now, there are other factors, I recognize that, but obviously they are successful merchandisers and sellers of products to the public?

A. Yes.

Q. Because they are generating more income, as you have indicated, than is being generated from the American operation?

A. Yes.

Q. So, I would assume, then, that there must be a constant change of information——

There must be a definite exchange of information shall we say between the subs and the parent in all levels? I am talking about purchasing, accounting, planning, advertising, merchandising, expansion or retraction from markets,

personnel training, site selection—those things are exchanged are they not so that each operation can take the benefit of the other's experience in success?

A. The exchange of information contacts by the subsidiaries is made by the Chief Executive of the company. The Director of Purchases of the parent company does not confer with the Director of Purchasing of the Canadian company or of the German company.

Q. The Director of Purchases never goes to England or never goes to Germany and see what is going on there. Has he never traveled there?

A. Oh, I am sure that he has traveled through all of [p. 88] those countries for purchases. We do import some items from the continent and from the British Isles, and as a matter of courtesy visit, I am sure, visit the counterpart in the subsidiaries.

But for an on-going dialogue on marketing conditions or the availability of and the pricing of merchandise between the——

Q. I see. It is not a day-to-day type of thing and he isn't telling them what to sell a given item for, I didn't mean that at all.

I am talking about the bigger picture—the big picture I am talking about.

A. Where it would be a major change in the big picture the Chief Executive officer of the parent company and the subsidiary company would exchange the information.

Q. Is the German tax return consolidated with the parent's?

A. No.

Q. Is it a consolidated return?

A. No, we can't. It is not permitted.

Q. How about England?

A. No, no foreign countries.

Q. That's true, okay——

A. Foreign subsidiary, and even——

Q. Now, wait a minute—what about the Mexicans?
[p. 89] A. No.

Q. No foreign subsidiary is allowed to file in conjunction?
A. That's true. If you are thinking of contiguous——

Q. I withdraw the question. When the parent files an annual report each year, in that annual report it discusses the operations of the subsidiaries does it not?
A. Yes.

Q. And the complete knowledge of all of its other holdings that is evidenced by Taxpayer's Exhibit Number One, which extends over and beyond these years that we are talking about, is that not true? All of its operations are discussed in that annual report?
A. Yes, there are comments made about the entire operation.

Q. By the parent?
A. Yes.

Q. Now, the English subsidiary is a little bit different is ot [sic] in that there is public ownership?
A. That's true.

Q. And it isn't one hundred percent owned?
A. That's right.

Q. I believe you said fifty-two point seven?
A. Yes.

Q. And the other forty-seven point three is public [p. 90] owned, is that right?
A. That's right.

Q. And the stock is traded on the London Stock Exchange, is that correct?
A. Yes.

Q. Now, we have been talking about the German subsidiary. Other than the difference in the stock ownership, is the

English operation similar to the German operation with respect to independence and so forth? You talked about that.

A. Yes, they are independent. They are autonomous.

Q. How large is the English operation, approximately?

A. Approximately two thousand stores.

Q. Is that throughout the British Isles? Does that include Ireland and Wales and Scotland?

A. Yes, and the Barbados, Jamaica.

Q. How many directors sit on the English subsidiary Board of Directors of the parent, do you know.

How many directors of the parent sit on the English Board?

Let me rephrase that question. I'll do it again. How many directors of the parent sit on the English Board of Directors?

A. One.

Q. Who is that?

A. The President of the F. W. Woolworth.

[p. 91] Q. Is that a change from previously as far as you know? It used to be three according to my information?

A. I don't have knowledge of the three.

Q. The Board of Directors of the English company is controlled by the parent, is it not?

A. Well——

Q. Since it has fifty-two point seven percent, it has the majority voting power and it does control the Board of Directors does it not?

A. The Board of Directors is permitted to operate, sometimes, with the President.

In many instances, let me say this, let me rephrase it. In many instances a representative of the parent company

does not attend the meetings of the English Board, which I understand meets once a month.

It is only sporadically that the parent company is represented at the Board meetings.

Q. However, again, I ask the question, the parent owns fifty-two point seven percent of the voting stock, therefore the parent at least determines fifty-two point seven, or the majority, of the Board of Directors in the English, is that not correct?

A. That's true.

Q. So, in common parlance we say that the parent controls the Board of the English subsidiary, does it not, sir? [p. 92] A. I would say that it has the right to control.

Q. Well, the members they elect are beholding to the parent are they not since the parent owns fifty-two point seven?

A. They are beholding to the parent and to the other minority stockholders as well.

Q. Okay. How many members of the English Board of Directors are members of the parent Board of Directors?

A. One.

Q. That's the Chairman?

A. Chairman?

Q. Chairman of the English Board of Directors is the member of the parent Board of Directors, is he not?

A. That's true.

Q. How about the German Board—well, in Germany you said there is no Board of Directors?

A. That's true. That's my belief. I don't know the legal point other than the German company is a German G.m.b.H. and that's about the extent of my expertise except to say that comes short of an organization between a corporation and a partnership.

Q. Well, is there a control in management in a G.m.b.H.?
A. Yes, there is a managing director.

Q. Well, I know you mentioned that there were two managing directors?
A. Yes.

[p. 93] Q. Well, the members of the Canadian subsidiary Board of Directors, do any of them sit on the Board of the parent company?
A. Would you restate that?

Q. I will restate the question. Do members of the Canadian Board of Directors sit on the parent Board, also?
A. Yes.

Q. How many?
A. I would say at least three.

Q. How about the Mexican Board of Directors, do members of that Board sit on the parent Board, also?
A. I don't know. I have never seen minutes of the Mexican company's Board. I don't know whether that is because of their foreign type organization or what, I don't know. There is a Board, as such, in the Mexican type of corporation.

Q. Is the Chairman of the Board of the Canadian operation one of the members that sit on the Board?
A. Yes.

Q. If there is a Canadian Board it is logical to conclude——
A. I am sure there is on the Canadian Board, but you asked me about the Mexican.

Q. I know, all I am saying is on the Mexican Board, it is logical to conclude that the Chairman of the Mexican Board probably sits on the parent Board, too, doesn't he?
A. I don't know.

[p. 94] Q. I think I covered this question, but just to make sure, when we talked about the decision to issue dividends, that again, is a decision that is made in conjunction with the parent Board of Directors, is it not, with respect to the English subsidiary, just as it is with the Canadian or Mexican or German subsidiaries? Is that not true, sir?

A. The decision to declare the dividend or to pay the dividend in Germany——

Q. I am talking about the English subsidiary?

A. Oh, the English subsidiary?

Q. Yes?

A. The decision is made by the English Board.

Q. And the parent has some input does it not?

A. The parent company is a member of the English Board of Directors.

Q. Okay. According to your exhibit here, Taxpayer's Exhibit One, you have got a lot of companies.

MR. OWENS: Exhibit A.

Q. (Mr. Kopel continuing.) Taxpayer's Exhibit A, thank you.

Are any of these manufacturing concerns of these subsidiaries on that chart in front of you, sir? Present corporate structure. I am looking at your Exhibit A?

A. Yes, I have it.

Q. Does Woolworth own any subsidiaries that manufacture [p. 95] articles?

A. Yes, it does. Woolworth owns the Kinney Shoe Corporation which does manufacture shoes.

Q. Lewis Shoe Company, is that a manufacturing company?

A. The Lewis Shoe Company is a manufacturer of shoes, yes.

Q. Richman Brothers, is that a manufacturer of clothing?

A. It is.

Q. What is F.W.W. Company of Canada, what does that mean?

A. Let's see——

Q. I am looking at your Taxpayer's Exhibit B, the fourth item under source of interest income, the F.W.W. Company of Canada?

A. Yes, I see.

Q. Do you know what that means?

A. That's the Canadian subsidiary, obviously.

Q. What does F.W.W. stand for, do you know?

A. F. W. Woolworth.

Q. Oh, that's all, very simple. What is 340 Supply Company, what does that mean?

A. The 340 Supply Company is a wholesale dealer in Coca-Cola syrup in Pennsylvania.

Q. Okay. Now, does the Canadian subsidiary buy merchandise from some of the manufacturing subsidiaries that we just talked about?

[p. 96] That is, from Kinney Shoes, Lewis Shoes, and Richman Brothers and so forth?

A. I don't know.

Q. Does the Mexican subsidiary buy any of their products?

A. I don't know.

Q. Does the English subsidiary?

A. I don't know.

Q. Does the German?

A. I don't know.

Q. It's conceivable they do if the price is competitive is that not true?

A. It is inconceivable to me because of the autonomous operation of the company and the lack of coordination and other facets that they would.

Q. There is nothing to prevent the English manager from buying from the Kinney Shoe Company if he thinks he can get shoes at a better price there than on the open market someplace else, is there?

A. Not to my knowledge—nothing to prevent it.

Q. Nothing to prevent it, okay.

A. I don't know English law as it is and import restrictions.

Q. Well, you don't really know where they buy their merchandise do you?

A. No.

[p. 97] Q. Either the English or the German?

A. I do know that the English company's sales and purchases are virtually nil.

Q. And you have testified that the parent doesn't force the subsidiaries to buy somewhere? They are pretty much independent to buy where they wish?

A. Yes.

Q. Let me ask you this question. Do you know if the English company purchases any goods from the American Woolworth Stores?

A. No.

Q. You don't know or you don't know that they do?

A. They do not—do you mean as an agent or as a supplier?

Q. What if Woolworth wanted to sell some English goods to its stores, wouldn't Woolworth turn to its English sub and be a buyer for it in order to get this merchandise for the American stores, sounds logical?

A. They might turn to the English company for suggestions as to a source.

Q. They might even help them buy, wouldn't they?

A. How do you help someone buy?

Q. Well, you tell them where to go and you can tell them how to bargain and you can tell them what the going rate is and you can tell them what is the right time to buy and what [p. 98] is the wrong time based on close-outs and all kinds of information that to which the English operation would be privy and which the American company wouldn't which could benefit the American company, is that not a possibility?

A. It is a possibility, but it is remote in our case.

Q. I see. Okay. I would like to review my notes if I may——

You testified that the initial investment made by Woolworth made in the English company back in 1911 was sixty-four thousand dollars?

A. Yes.

Q. Do you have knowledge of other investments or loans made by the parent in the English company subsequent to that?

A. I don't have specific knowledge, but I know there were.

Q. Do you have any idea of the amount of the nature of those investments over the years?

A. There were investments which were repaid.

Q. Those were loans, then?

A. They were loans.

Q. How much were those loans? What did they amount to?

A. I would say they were in the hundreds of thousands.

Q. Millions?

A. No.

Q. Hundreds of thousands how often?

[p. 99] A. Not too frequently. I would have to go back and search the record.

Q. Are there any loans outstanding at the present time that you know of?

A. None.

Q. Do you know when the last loan was paid off?

A. No. Certainly, any loan would have to have been—I came with the company in 1968, and there has been no indebtedness.

Q. Well, as you indicated, these companies, the German and English subsidiaries are more profitable than the parent, so they probably don't need loans now. But in the formation stages the parent was helping them to get started with loans was it not over and above the initial sixty-four thousand dollar investment, is that not true?

A. Yes.

Q. Now, with respect to the German operation you said that there was a four hundred thousand dollar loan or investment?

A. Based upon——

Q. After World War II?

A. Yes.

Q. And were there other loans made to the German operations, also, that were repaid over a period of time?

A. I don't know. There are no outstanding amounts at [p. 100] this time.

Q. Now?

A. And the only one that I have an inkling of is that four hundred thousand. I haven't specifically researched this.

Q. I see. You just don't know whether or not other amounts were—loans were made or not?

A. No.

Q. I have a statement here that I would like to read to you and tell me if this—the reason that I am reading this

to you, it is because you said something about you don't file consolidated returns of the German company.

Do the tax laws of the United States change with respect to filing consolidated returns with foreign subsidiaries—or have they—sometime in the last fifteen or eighteen years as far as you know?

A. As far as I know——

Q. Do you know the answer to that?

A. Well——

Q. Let me read this statement to you and you will understand why I am asking the question. It says, "As of 1960, the Woolworth financial statement as in the case of the Canadian and Mexican companies consolidates the German company. The annual report for that year states that this change was made by reason, 'the growing importance of our subsidiary companies.' [p. 101] When this course was decided upon Woolworth sent one of its officers and a representative of its auditing firm to Germany to direct the necessary changes in the accounting methods to accomplish the consolidation."

A. You didn't mentioned tax, just the consolidated financial reporting.

Q. I see. Let's go back, then. Maybe I misstated my question. Financial reporting is consolidated, then, is it not?

A. Yes.

Q. Is that what you are saying?

A. Yes.

Q. For all of the subsidiaries?

A. Yes, with the exception of England.

Q. Excuse me, maybe I had better be more specific. You have got a whole bunch of other stuff in your Taxpayer's Exhibit A.

The issue here is just England, Germany, Mexico and Canada. Now, all of those are consolidated returns except for England, is that correct?

A. Consolidated financial statements. You used the word "return".

Q. I am sorry. I beg your pardon. Financial statements, excuse me. Those financial statements are consolidated. And the English law prevents the——

[p. 102] A. No, it's the English company investment that is stated as a separate item in our financial statements because we do not own one hundred percent of them.

Q. Okay. So, you have a consolidated financial statement for the three subsidiaries that we are talking about and the English company, as I understand what you are saying, listed as a subsidiary?

A. It is listed as another—see, the assets and liabilities of the one hundred percent owned subsidiaries are consolidated in our financial statement.

In addition to the financial statement there is a line for our equity in the English company.

Q. Okay, thanks for clarifying that for me. I misspoke when I said return. There is a difference between a financial statement and a return.

A. There is some confusion in these areas and a lot of these articles or whatever that you are referring to.

Q. I am referring to the facts found by the New Jersey court.

So, just in summary, then, with respect to your testimony—on direct you were pointing out to us, then, that the day-to-day/minute-by-minute decisions, then, of necescity must be made by the officers of the corporation and are made independent of the parent by the Canadian, Mexican, German and English subsidiaries?

[p. 103] A. Yes.

Q. It is also not true, however, that the overall, in the big picture, the overall policy and direction of all of these subsidiaries is in line with the parent's thinking?

MR. BRAY: I would object to the question, too vague.

Q. (Mr. Kopel continuing.) Maybe I can rephrase the question.

MR. BRAY: I think we have been over this and I didn't object before——

Q. (Mr. Kopel continuing.) Well, what I am getting at, Mr. Feeley, and I am not trying to be obtuse about it, is that the parent company, Woolworth, has an obligation to its shareholders does it not?

A. In fact it does, yes.

Q. Of course, and the Board of Directors are responsible to the shareholders and elected by the shareholders are they not?

A. Yes.

Q. Would it be a fair statement to say that this Board of Directors of the parent would be derelict in its obligations to its shareholders if it did not oversee the operations of the subsidiaries?

A. Absolutely.

MR. KOPEL: I have no further questions.

[p. 104] MR. BRAY: I have no more questions.

MR. OWENS: I have a couple of quick questions.

EXAMINATION

BY MR. OWENS:

Q. The letterhead on the protests lists at the bottom several operations, Woolworth and Woolco, and what is Woolworth International?

A. Woolworth International is a finance company which owns—it's a Delaware corporation which has an investment in other Delaware corporations which own store locations in Spain.

Q. That's the Woolworth International Credit Corporation shown on Exhibit A?

A. Yes.

Q. Does Woolworth have a department or a section which devotes its activity to the foreign subsidiaries, an overseas division or whatever it might be called?

A. They have an individual who is designated as the International Vice President.

Q. International Vice President?

A. Who performs the function of liaison with the lesser subsidiaries such as the subsidiary in Spain and in Mexico and from time to time he may have contact with the major subsidiaries, if you will, of the company. This one individual's [p. 105] function is liaison.

Q. For the subsidiaries?

A. Yes.

Q. The less important subsidiaries?

A. Yes.

Q. But no section or department?

A. No, we do not.

Q. All right. Do you know, Mr. Feeley, if any of the officers in the taxable year that we are talking about, were any of these officers in any of the subsidiaries that we are talking about individuals who were people who started with the parent company and were transferred to one or more of the subs?

A. Not in the taxable year that we are talking about.

Q. Is there anybody who works on for the subsidiaries that we are talking about, are there any of those people who are in the parent company's pension program or profit sharing program or any program?

A. There are some members of the Canadian subsidiary and the Mexican subsidiary who are included in the Woolworth pension plan.

Q. On behalf of those individuals the parent company would pay the employees share of the contribution?

A. Yes. Excuse me, may I correct that? It's only the parent company's employees and the employees of the Mexican [p. 106] subsidiary—certain employees of the Mexican subsidiary—and the Spanish company are included in the pension plan of the Woolworth Company and the contribution made by the parent company. The Canadian company has been excluded.

Q. Are any of the officers of the four subsidiaries also paid by the parent company? What I am talking about is as you have indicated they are not expatriates, and some companies, parent companies, make up differences in remuneration?

A. Yes. None of the English people receive compensation from the parent company. None of the German people receive compensation from the parent company.

With respect to an individual in Spain on occasion there have been payments to make up the—for whatever reasons, the differential cost of living or tax break.

Similarly, there have been payments made with respect to the Mexican subsidiary.

None to my knowledge with respect to any of the Canadian people.

Q. One more clarification. I think you mentioned several times that the British and the German companies, in particular, grew because they were reinvesting. Do you mean investments of the foreign subsidiaries using its own earnings or making payments, dividend payments to the parent who then reinvests it?

A. With respect to the English company, the parent company [p. 107] did not reinvest dividends received from the English company.

With respect to the German company, the parent company did make reinvestment of a substantial portion of the dividends received from the German company.

MR. OWENS: That's all.

RECROSS EXAMINATION

BY MR. KOPEL:

Q. Just a few more questions, Mr. Feeley, if you don't mind.

Other non-business income in the schedules—it says foreign exchange gain on dividends received. Could you just clarify just exactly what that is, please?

A. Well, when the English company advises that—the parent company that it is going to pay a dividend of "X" number of pounds, say seven million pounds, as of a certain date, the parent company, in effect, insures receipt of that number of pounds in thirty or sixty days forward by entering into a foreign exchange contract.

As a result of the foreign exchange contract they are protected against receiving fewer pounds because of the exchange fluctuation, and in this particular case the fluctuation resulted in a profit.

Q. The dividend that the parent receives from the four subsidiaries that we are talking about, where do these [p. 108] dividends go?

A. They go into the general treasury of the company.

MR. KOPEL: I have no further questions, Your Honor.

EXAMINATION

BY MR. OWENS:

Q. One last question. I really don't understand that foreign exchange deal.

Does the English company declare a dividend in pounds or dollars?

A. In pounds.

Q. And the company, then, gets that same amount in pounds?

A. Yes, at some forward date.

Q. Yes. Then, when they sell those pounds I assume they find that it is of greater value?

A. At this particular time they did. Let's assume that the pound is equivalent to two dollars as it is now. They were notified by the English company that they were going to disburse a dividend in April of seven million pounds at two dollars a pound. That would be fourteen million dollars which we hope to receive.

So, in order to be sure that we do receive fourteen million dollars as of the stated date we pay at a premium, [p. 109] as it were, and we sell our right—a contract to receive the seven million pounds for something less.

So, that we can say that we would see them for a dollar ninety-five, and that's about the highest of a premium, something like that, and then we are assured that we are going to be receiving—we know what we have got in our hand and we expect to receive it in April.

We deliver—we may conclude that contract in April when the Engilsh company gives us the pounds and we give them to the purchaser.

We give them to them at the stated price which we received a dollar ninety-five for. At the same time the English company, then, disburses the pound to us and perhaps the market conditions are such that we can make fifty cents profit on the pound so that we will be getting two fifty. So, that is how a profit would arise.

The purpose of the hedge is to prevent a loss, but we can make a profit.

MR. KOPEL: You are saying in case the pound goes down appreciably is-a-vis the dollar?

A. That's right.

MR. OWENS: Mr. Bray, you indicated that this should be treated in the same fashion as dividends?

MR. BRAY: Yes. That's the purpose of the hedging transaction is to protect the value of the pound.

[p. 110] A. In another taxable transaction there will be a foreign exchange loss which would represent the insurance premium that we had paid for that protection.

Q. (Mr. Owens continuing.) You are talking about dividend income of sixty-five million on Taxpayer's Exhibit B, and that does not include the foreign exchange gain?

A. That's true.

Q. That means, then, that you didn't report this gain as dividend income and you didn't get a foreign tax credit on it, with respect to that gain?

A. That's right.

• • • • • • • • • • •

REPORT
CIT
Revised July, 1976

STATE OF NEW MEXICO
CORPORATION INCOME TAX RETURN

1975

Mail original of this return, any required schedules, and the tax due to the Bureau of Revenue, P. O. Box 630, Santa Fe, New Mexico 87503, on or before the 15th day of the third month following the close of the taxable year. Returns for the calendar year are due March 15, 1976. Tax due, if any must be paid in full. DO NOT MAIL CASH.

State of New Mexico
Bureau of Revenue

PLEASE PRINT OR TYPE CORRECT NAME, ADDRESS, & ZIP CODE BELOW

F.W. Woolworth Co.
233 Broadway
New York, New York 10007

NO

DO NOT WRITE IN THE SPACE ABOVE

NEW MEXICO BUREAU OF REVENUE ID NUMBER 01- 924756 -00-

☐ Calendar year ending 12-31-76 or
☐ Fiscal year beginning 2-1- '75 and ending 1-31-77

A. Incorporation: Date 12/15/11 State NEW YORK
B. Exact date business began in New Mexico 12/31/28
C. Accounting records are located at NEW YORK, NEW YORK
D. Kind of Business GENERAL RETAIL MERCANTILE
E. Was a New Mexico CIT-1 return filed for ~~1974~~ 1975? YES
If NO, explain
F. Does the corporation operate only in New Mexico? No

G. If, during the current tax period, the Federal Government has adjusted your Federal Taxable Income, state the years. NOTE: In all cases an amended return must be filed within 30 days from the date the adjustment becomes fixed, and attach copy of Revenue Agent Report(s)
H. List taxable years for which federal waivers of the statute of limitations were in effect as of the close of the fiscal year covered by this return and the dates on which the waivers expire
I. Federal Identification Number: 13-5423340

INCOME AND DEDUCTIONS

1. Total Income as shown on Federal Form 1120, Line 11	1	997,712,306
2. Federal Taxable Income as shown on Federal Form 1120, Line 30 or if separate accounting is used, attach schedule	2	87,603,761
3. Deductions		
A. Interest on obligations of the United States of America, to the extent included in Federal Taxable Income	3A	
B. Amounts taxed as income to another member of an affiliated group of Corporations under the Banking and Financial Corporation Tax Act (72-159-1 to 72-159-9); Attach schedule listing names and amounts	3B	
OR C. Non-New Mexico Income (For taxpayers operating BOTH within and without New Mexico (from Line 25 of Schedule B)	3C	87,519,090
D. Total of Lines 3A and 3B, OR Line 3C	3D	87,519,090
4. New Mexico Taxable Income (Line 2 less Line 3D)	4	84,671

TAX DUE

5. Tax on Line 4 above at 5% or Alternative Tax from Line 32, Schedule C	5	4231
6. Less tentative income tax payment	6	-
7. TAX DUE (line 5 less Line 6)	7	4231
8. Late Filing–Penalty (2% of Line 7 per month or partial month not to exceed 10%)	8	-
9. Late Filing–Interest (½% of Line 7 per month or partial month that this Report is late) Rec'd 12-15-77	9	127
10. TOTAL AMOUNT DUE (Add Lines 7, 8 and 9–Remit This Amount)	10	4358.00
11. OVERPAYMENT (Line 6 less Line 5–Refund Due) SEE ITEM L of INSTRUCTIONS	11	

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete. If prepared by a person other than taxpayer, his declaration is based on all information of which he has any knowledge.

Signature of Officer — Asst Secy (Title) — 10/12/77 (Date)

Signature of individual or firm preparing the return — Address — Date

[EXHIBIT 11]
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SCHEDULE B CIT-1 **ALLOCATION AND APPORTIONMENT OF INCOME** When reporting losses, show figures in brackets (

This schedule is to be used by taxpayers having income both within and without the State of New Mexico, and making the election to allocate and apportion. SEE INSTRUCTIONS.

Allocation of NET NONBUSINESS INCOME and Deduction of NET NONTAXABLE INCOME

1477107910 0

NET NONBUSINESS INCOME	Column 1 Total	Column 2 Less Related Expense	Column 3 Net	Column 4 Allocated To New Mexico
12. Dividends $_____ less federal special deductions from Schedule I, Federal Form 1120 $_____ 12	65323943		65323943	
13. Interest 13	2,350,141	✓	2,350,141	
14. Rents 14				
15. Royalties 15				
16. Profit or Loss on sale of Nonbusiness Assets 16				
17. Other Nonbusiness Income (Attach Schedule) 17	1595551	✓	1595551	
18. Partnership Income 18				
NET NONTAXABLE INCOME				
19. Interest on U.S. obligations to the extent included in Federal Taxable Income 19				
20. Amounts taxed as income to another member of an affiliated group of Corporations under the Banking and Financial Corporation Tax Act 20				
21. Total of Line 12 through Line 20 21	69329635		69329635	

BUSINESS INCOME		
22. Apportionable Business Income (Line 2, Page 1 less Line 21, Column 3) 22	18274068	
23. Apportion 4.6% (from Line 29B) of Line 22, as New Mexico Income 23		84622
24. New Mexico Taxable Income (Line 23 plus Line 21, Column 4) 24		84622
25. Non-New Mexico Income (Line 2, Page 1, less Line 24). Enter here and on Line 3C, Page 1 25		87519081

Apportionment Formula

		Column 5 Everywhere	Column 6 New Mexico	
26. Property Factor	A. Average yearly value of INVENTORY 26A.	79274698	2341638	
	B. Average yearly value of REAL and TANGIBLE PERSONAL PROPERTY used in the business including land, buildings, machinery and equipment, mobile equipment, furniture and fixtures, and other tangible assets (Attach Schedule) 26B.	340021098	1234922	
	C. RENTED PROPERTY (valued at annual rent paid times eight (8), enter net total) 26C.	1039265409	5168104	
	D. Total Property (Add Lines 26A, 26B and 26C) 26D.	1958029204	2750664	
	E. Property Factor (Line 26D, Column 6 divided by Line 26D, Column 5) 26E.			.001406712
27. Payroll Factor	A. Wages, salaries, commissions and other compensation of EMPLOYEES related to business income 27A.	432517253	1976850	
	B. Payroll Factor (Line 27A, Column 6 divided by Line 27A, Column 5) 27B.			.004573260
28. Sales Factor	A. Gross Receipts (other than items constituting nonbusiness income) including sales delivered or shipped TO NEW MEXICO FROM OUTSIDE New Mexico, sales delivered or shipped TO NEW MEXICO FROM WITHIN New Mexico, sales delivered or shipped FROM NEW MEXICO TO THE U.S. GOVERNMENT, and sales delivered or shipped FROM NEW MEXICO TO A STATE IN WHICH THE TAXPAYER IS NOT TAXABLE (Column 5 must equal Gross Receipts less returns and allowances) 28A.	2607993364	12252425	
	B. Sales Factor (Line 28A, Column 6, divided by Line 28A, Column 5) 28B.			.004698448
29. A. Total Percent (Add Lines 26E, 27B and 28B) 29A.				.010677220
B. Average Percent (Line 29A divided by 3, OR, if one or more of the factors is excluded, divide by the number of factors remaining SEE ITEM O of INSTRUCTIONS). Enter here and on Line 23 29B.				.003559073

SCHEDULE C—ALTERNATIVE TAX COMPUTATION

NOTE: May be used only by those Corporations (1) whose only activities in New Mexico consist of making sales; and (2) which do not own or rent real estate in New Mexico; and (3) whose annual gross sales in or into New Mexico amount to not more than $100,000.00.

30. Gross sales in or into New Mexico 30		
31. Tax rate 31		3%
32. Tax Due (Line 30 times Line 31) Enter on Line 5, Page 1 32		

Form **1120**
Department of the Treasury
Internal Revenue Service

U.S. Corporation Income Tax Return

For calendar year 1976 or other taxable year beginning February 1, 1976, ending January 31, 19 77

1976

4 7 7 1 0 7 2 (PLEASE TYPE OR PRINT)

Check if—
A Consolidated return ☐
B Personal Holding Co. ☐
C Business Code No. (See page 7 of instructions) 5300

Name: F. W. WOOLWORTH CO. (N.Y. CORP.)

Number and street: 233 BROADWAY

City or town, State, and ZIP code: NEW YORK, N.Y. 10007

D Employer Identification number: 13-5493340

E Date incorporated: Dec. 15, 1911

F Enter total assets from line 14, column (D), Schedule L (See instruction R) $

IMPORTANT—Fill in all applicable lines and schedules. If the lines on the schedules are not sufficient, see instruction N.

GROSS INCOME	1	Gross receipts or gross sales ..... Less: Returns and allowances	1	2,477,269,025
	2	Less: Cost of goods sold (Schedule A) and/or operations (attach schedule)	2	1,598,258,405
	3	Gross profit	3	879,010,620
	4	Dividends (Schedule C)	4	74,644,157
	5	Interest on obligations of the United States and U.S. instrumentalities	5	
	6	Other interest	6	3,533,766
	7	Gross rents	7	6,870,082
	8	Gross royalties	8	
	9	(a) Net capital gains (attach separate Schedule D)	9(a)	299,446
		(b) Ordinary gain or (loss) from Part II, Form 4797 (attach Form 4797)	9(b)	
	10	Other income (see instructions—attach schedule)	10	33,603,213
	11	TOTAL income—Add lines 3 through 10	11	997,961,284
DEDUCTIONS	12	Compensation of officers (Schedule E)	12	
	13	Salaries and wages (not deducted elsewhere)	13	458,378,809
	14	Repairs (see instructions)	14	17,362,871
	15	Bad debts (Schedule F if reserve method is used)	15	6,165,863
	16	Rents	16	137,780,086
	17	Taxes (attach schedule)	17	55,381,780
	18	Interest	18	44,830,646
	19	Contributions (not over 5% of line 30 adjusted per instructions—attach schedule)	19	838,289
	20	Amortization (attach schedule)	20	
	21	Depreciation (Schedule G)	21	23,525,380
	22	Depletion	22	
	23	Advertising	23	53,553,586
	24	Pension, profit sharing, etc. plans (see instructions) (enter number of plans ➤ .....)	24	12,457,090
	25	Employee benefit programs (see instructions)	25	
	26	Other deductions (attach schedule)	26	89,196,812
	27	TOTAL deductions—Add lines 12 through 26	27	899,476,212
	28	Taxable income before net operating loss deduction and special deductions (line 11 less line 27)	28	98,485,072
	29	Less: (a) Net operating loss deduction (see instructions—attach schedule) 29(a) 1,572,176		
		(b) Special deductions (Schedule I) 29(b) 9,260,214		10,832,390
	30	Taxable income (line 28 less line 29)	30	87,652,682
TAX	31	TOTAL TAX (Schedule J)	31	7,516,630
	32	Credits: (a) Overpayment from 1975 allowed as a credit		
		(b) 1976 estimated tax payments		
		(c) Less refund of 1976 estimated tax applied for on Form 4466 ( )		
		(d) Tax deposited with Form 7004 (attach copy)		
		(e) Tax deposited with Form 7005 (attach copy)		
		(f) Credit from regulated investment companies (attach Form 2439)		
		(g) U.S. tax on special fuels, nonhighway gas and lubricating oil (attach Form 4136)		
	33	TAX DUE (line 31 less line 32). See instruction G for depositary method of payment	33	
	34	OVERPAYMENT (line 32 less line 31)	34	
	35	Enter amount of line 34 you want: Credited to 1977 estimated tax ➤ Refunded ➤	35	

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which the preparer has any knowledge.

Date ..... Signature of officer .....

Title .....

Preparer's signature (and employer's name, if any) ..... Date

Identifying number (see instructions) ..... Address and ZIP code

Schedule A Cost of Goods Sold (See instructions 2)

1 Inventory at beginning of year		465,274,675
2 Merchandise bought for manufacture or sale		1616,840,864
3 Salaries and wages		9,092,359
4 Other costs (attach schedule)		903,824
5 Total		2,092,106,722
6 Less: Inventory at end of year		493,848,316
7 Cost of goods sold—Enter on line 2, page 1		1,598,258,405

Method of inventory valuation ➤ Lifo

Was there any substantial change in determining quantities, cost, or valuations between opening and closing inventory? ☐ Yes ☒ No

If "Yes," attach explanation.

Schedule C Dividends (See instruction 4)

1 Domestic corporations subject to 85% deduction	
2 Certain preferred stock of public utilities	
3 Foreign corporations subject to 85% deduction	
4 Dividends from wholly-owned foreign subsidiaries subject to 100% deduction (section 245(b))	
5 Other dividends from foreign corporations	39,831,161
6 Includable income from controlled foreign corporations under subpart F (attach Forms 3646)	
7 Foreign dividend gross-up (section 78)	25,502,782
8 Qualifying dividends received from affiliated groups and subject to the 100% deduction (section 243 (a)(3))	9,260,214
9 Qualifying dividends received from affiliated groups and subject to the provisions of section 1564(a)	
10 Taxable dividends from a DISC or former DISC not included in line 1 (section 246(d))	
11 Other dividends	
12 Total—Enter here and on line 4, page 1	74,594,157

Schedule E Compensation of Officers (See instruction 12)

1. Name of officer	2. Social security number	3. Title	4. Time devoted to business	Percent of corporation stock owned 5. Common	6. Preferred	7. Amount of compensation	8. Expense account allowances

Total compensation of officers—Enter here and on line 12, page 1

Schedule F Bad Debts—Reserve Method (See instruction 13)

1. Year	2. Trade notes and accounts receivable outstanding at end of year	3. Sales on account	Amount added to reserve 4. Current year's provision	5.	6. Amount charged against reserve	7. Balance for bad debts at end of year
1972	100,271,255	150,523,456	4,174,461	Reserve	2,627,461	5,100,625
Jan. 1973	93,715,369	9,715,786	265,748	Transferred	325,081	5,041,092
Fiscal 1973	148,359,314	189,305,366	5,016,389	To	4,021,537	6,035,944
Fiscal 1974	139,660,013	211,538,138	9,559,206	GECC	6,543,830	9,071,320
Fiscal 1975	183,252,251	139,604,372	9,771,280	Jan.10,1977	10,017,562	8,824,938
Fiscal 1976	7,514,195	179,725,457	6,165,963	*(540,820)	10,629,981	3,809,000

Schedule G Depreciation (See instructions for Schedule G)

Note: If depreciation is computed by using the Class Life (ADR) System or the Guideline Class Life System, you must file Form 4832 (Class Life (ADR) System) or Form 5006 (Guideline Class Life System) with your return. Check box(es) if you made an election this taxable year to use ☐ Class Life (ADR) System and/or ☒ Guideline Class Life System. See Publication 534.

1. Group and guideline class or description of property	2. Date acquired	3. Cost or other basis	4. Depreciation allowed or allowable in prior years	5. Method of computing depreciation	6. Life or rate	7. Depreciation for this year
1 Total additional first-year depreciation (do not include in items below) ➤						
2 Depreciation from Form 4832						17,486,670
3 Depreciation from Form 5006						4,960,750
4 Other depreciation:						
Buildings	Various					1,099,424
Furniture and fixtures						
Transportation equipment						
Machinery and other equipment						
Other (specify)	Less - F.W.W. CORP. (PA.)					(20,464)
5 Totals						
6 Less: Amount of depreciation claimed in Schedule A and elsewhere on the return						
7 Balance—Enter here and on line 21, page 1						23,525,380

Schedule C Special Deductions

1	(a) 85% of line 1, Schedule C	
	(b) 60.208% of line 2, Schedule C	
	(c) 85% of line 3, Schedule C	
	(d) 100% of line 4, Schedule C	-0-
2	Total—See instructions for limitation	9,260,214
3	100% of line 8, Schedule C	
4	Enter dividends received deduction allowed for dividends reported on line 9, Sch. C. See section 1564(b) for computation	
5	Dividends paid on certain preferred stock of public utilities (see instructions)	
6	Western Hemisphere trade corporations (see instructions)	
7	Total special deductions—Add lines 2 through 6. Enter here and on line 29(b), page 1	9,260,214

Schedule J Tax Computation

1	Taxable income (line 30, page 1)		87,652,682
2	Enter line 1 or $25,000, whichever is lesser. (Members of a controlled group, see instructions)		25,000
3	Line 1 less line 2		87,627,682
4	Enter line 3 or $25,000, whichever is lesser. (Members of a controlled group, see instructions)		25,000
5	Line 3 less line 4		87,602,682
6	20% of line 2		5,000
7	22% of line 4		5,500
8	48% of line 5		42,049,287
9	Income tax (Sum of lines 6, 7 and 8 or alternative tax from separate Schedule D, whichever is lesser)		42,005,887
10	(a) Foreign tax credit (attach Form 1118)	32,319,693	
	(b) Investment credit (attach Form 3468)	2,415,967	
	(c) Work incentive (WIN) credit (attach Form 4874)		
11	Total of lines 10(a), (b), and (c)		34,735,660
12	Line 9 less line 11		7,270,227
13	Personal holding company tax (attach Schedule PH (Form 1120))		
14	Tax from recomputing a prior year investment credit (attach Form 4255)		246,403
15	Tax from recomputing a prior year WIN credit (see instructions—attach computation)		
16	Minimum tax on tax preference items (see instructions—attach Form 4626)		
17	Total tax—Add lines 12 through 16. Enter here and on line 31, page 1		7,516,630

Schedule K Record of Federal Tax Deposits Class Tax Number 503 (List deposits in order of date made—See instruction G)

Date of deposit	Amount	Date of deposit	Amount	Date of deposit	Amount

		Yes	No
G	Did you claim a deduction for expenses connected with:		
	(1) Entertainment facility (boat, resort, ranch, etc.)?		X
	(2) Living accommodations (except for employees on business)?		X
	(3) Employees' families at conventions or meetings?		X
	(4) Employee or family vacations not reported on Form W-2?		X
H	(1) Did you at the end of the taxable year own, directly or indirectly, 50% or more of the voting stock of a domestic corporation? (For rules of attribution, see section 267(c).)	X	
	If "Yes," attach a schedule showing: (a) name, address, and identifying number; (b) percentage owned; and (c) taxable income or (loss) (e.g., if a Form 1120: from line 30, page 1, Form 1120) of such corporation for the taxable year ending with or within your taxable year.		
	(2) Did any individual, partnership, corporation, estate or trust at the end of the taxable year own, directly or indirectly, 50% or more of your voting stock? (For rules of attribution, see section 267(c).)		X
	If "Yes": (a) Attach a schedule showing name, address, and identifying number. (b) Enter percentage owned ► (c) Was the owner of such voting stock a person other than a U.S. person? (See instruction T.)		
	If "Yes," enter owner's country ►		X
I	Did you ever declare a stock dividend?		
J	Taxable income or (loss) from line 30, page 1, Form 1120 for your taxable year beginning in: 1973 108,552,542, 1974 71,861,679, 1975 70,701,857		
K	Were you a member of a controlled group subject to the provisions of Section 1561?	X	

		Yes	No
	If "Yes," check the type of relationship: (1) ☒ parent-subsidiary (2) ☐ brother-sister (3) ☐ combination of (1) and (2) (See section 1563.)		
L	Refer to page 7 of instructions and state the principal: Business activity Retail Trade Product or service General Merchandise		
M	Did you file all required Forms 1087, 1096 and 1099?	X	
N	Were you a U.S. shareholder of any controlled foreign corporation? (See sections 951 and 957.)	X	
	If "Yes," attach Form 3646 for each such corporation.		
O	If you are a farmers' cooperative, check type: ☐ purchasing ☐ marketing ☐ service ☐ other (explain) ►		
P	During this taxable year, did you pay dividends (other than stock dividends and distributions in exchange for stock) in excess of your current and accumulated earnings and profits? (See sections 301 and 316.) If "Yes," file Form 5452. If this is a consolidated return, answer here for parent corporation and on Form 851, Affiliations Schedule, for each subsidiary.		X
Q	Did you, at any time during the taxable year, have any interest in or signature or other authority over a bank, securities, or other financial account in a foreign country (except in a U.S. military banking facility operated by a U.S. financial institution)? If "Yes," attach Form 4683. (For definitions, see Form 4683.)	X	
R	Were you the grantor of, or transferor to, a foreign trust during any taxable year, which foreign trust was in being during the current taxable year, whether or not you have any beneficial interest in such trust? If "Yes," attach Form 4683. (For definitions, see Form 4683.)		X

Schedule L Balance Sheets

	Beginning of taxable year (A) Amount	Beginning of taxable year (B) Total	End of taxable year (C) Amount	End of taxable year (D) Total
ASSETS				
1 Cash		20,006,818	129,412,465	2,570,412
2 Trade notes and accounts receivable	234,218,924			129,412,465
(a) Less allowance for bad debts		234,218,924		
3 Inventories		466,357,790		493,858,667
4 Gov't obligations: (a) U.S. and instrumentalities		9,265,281		9,421,918
(b) State, subdivisions thereof, etc.				
5 Other current assets (attach schedule)		2,490,756		
6 Loans to stockholders				
7 Mortgage and real estate loans				
8 Other investments (attach schedule)		383,282,512		420,265,659
9 Buildings and other fixed depreciable assets	340,557,833		343,422,656	
(a) Less accumulated depreciation	164,635,512	175,922,321	172,077,954	171,344,702
10 Depletable assets				
(a) Less accumulated depletion				
11 Land (net of any amortization)		26,689,878		25,976,232
12 Intangible assets (amortizable only)				
(a) Less accumulated amortization				
13 Other assets (attach schedule)		86,834,104		83,268,958
14 Total assets		1,405,958,384		1,343,019,032
LIABILITIES AND STOCKHOLDERS' EQUITY				
15 Accounts payable		91,305,547		108,748,826
16 Mtgs., notes, bonds payable in less than 1 yr.		12,251,651		9,665,988
17 Other current liabilities (attach schedule)		132,032,251		131,574,976
18 Loans from stockholders				
19 Mtgs., notes, bonds payable in 1 yr. or more		468,108,343		342,373,264
20 Other liabilities (attach schedule)		40,675,703		39,153,494
21 Capital stock: (a) Preferred stock	8,213,704		8,229,184	
(b) Common stock	97,869,492	106,103,196	97,874,099	105,103,283
22 Paid-in or capital surplus		323,048		323,048
23 Retained earnings—Appropriated (attach sch.)				
24 Retained earnings—Unappropriated		574,303,363		616,161,352
25 Less cost of treasury stock		(19,144,718)		(11,085,199)
26 Total liabilities and stockholders' equity		1,405,958,384		1,343,019,032

Schedule M-1 Reconciliation of Income per Books with Income per Return

1 Net income per books	86,604,269	7 Income recorded on books this year not included in this return (itemize)	
2 Federal income tax	15,782,493	(a) Tax-exempt interest $	
3 Excess of capital losses over capital gains		See Schedule Attached	40,197,044
4 Income subject to tax not recorded on books this year (itemize) See Schedule Attached	33,122,386	8 Deductions in this tax return not charged against book income this year (itemize)	
5 Expenses recorded on books this year not deducted in this return (itemize)		(a) Depreciation $	
(a) Depreciation $		(b) Depletion $	
(b) Depletion $		See Schedule Attached	307,059
Ordinary Loss y/e 1/31/76	48,979	9 Total of lines 7 and 8	40,504,103
See Schedule Attached	3,431,048	10 Income (line 28, page 1)—line 6 less 9	99,485,072
6 Total of lines 1 through 5	138,989,175		

Schedule M-2 Analysis of Unappropriated Retained Earnings per Books (line 24 above)

1 Balance at beginning of year	574,303,363	5 Distributions: (a) Cash	39,986,308
2 Net income per books	86,604,269	(b) Stock	
3 Other increases (itemize)		(c) Property	
		6 Other decreases (itemize) Employee Stock option and Purch. plan excess cost over amounts received	4,759,972
		7 Total of lines 5 and 6	44,746,280
4 Total of lines 1, 2, and 3	660,907,632	8 Balance at end of year (line 4 less 7)	616,161,352

☆ U.S. GOVERNMENT PRINTING OFFICE : 1976—O-214-266 1040-01-070

Assessment
RP-17
Revised Dec. 1975

STATE OF NEW MEXICO
BUREAU OF REVENUE

NOTICE OF ASSESSMENT OF TAXES

Commissioner
New Mexico Bureau of Revenue
P.O. Box 630
Santa Fe, New Mexico 87503

F.W. Woolworth Co.
233 Broadway
New York, New York 10007

Assessment No. 224952
Assessment Date 12/9/77
Interest Date 12-15-77
Reporting Period FYE 1-31-77
New Mexico ID or Social Security No. 01-002154-00 0

TYPE OF TAX	TAX DUE	PENALTY	INTEREST	TOTAL
CORPORATION INCOME TAX	15,844 82		633 79	16,478 61
	15,844 82		633 79	
TOTAL AMOUNT DUE				16,478 61

EXPLANATION OF LIABILITY

Office Audit by: Fabie Gonzales

Dated: 12-2-77

Demand is made for the immediate payment of this amount pursuant to Section 72-13-32, N.M.S.A. 1953. Failure to pay the total amount due within 30 days from the assessment date shown above will cause you to become a delinquent taxpayer under Section 72-13-31, N.M.S.A. 1953, and subject to your property and rights to property to seizure by levy under Section 72-13-45, N.M.S.A. 1953, unless, within 30 days from the assessment date shown above, (1) you furnish security for payment of the tax pursuant to Section 72-13-68, N.M.S.A. 1953, or (2) you protest pursuant to Section 72-13-38, N.M.S.A. 1953, or (3) the total amount of the tax is abated.

Any civil penalty or interest accruing after the interest date shown above may be collected in the same manner as and concurrently with, the tax to which it relates without assessment or separate proceeding of any kind.

The State of New Mexico has a lien upon all your property and rights to property by reason of this document to the extent provided in Section 72-13-51, N.M.S.A. 1953 and a notice of lien may be recorded pursuant to Section 72-13-52, N.M.S.A. 1953.

Please do not combine payment hereunder with your current tax payments. Please make your check payable to the Bureau of Revenue, attach it to the copy of this document provided for that purpose and mail to the address shown above.

FOR A STATEMENT OF TAXPAYER'S REMEDIES SEE REVERSE SIDE

Gicmv

COMMISSIONER OF REVENUE OR HIS DELEGATE

67a

[EXHIBIT 2]

NAME: F W Woolworth Co

ID: 11-0021541-16-6

YEAR: FYE 1-31-77

OFFICE AUDIT

DATE: 12-1-77

	1	2	3	4
			Erroneously Allocated Business Income	
Erroneously Allocated Business				
Dividends			$3383943	
Interest			2350141	
Rents				
Royalties				
Profit or Loss on sale of Assets				
Other Income			1595551	
Partnership Income				
TOTAL			$9329635	
Adjustment to Apportionment Percentage				
Sales Everywhere		25071990364		
Add: Line 89		9329635		
		25771319999		
New Mexico Sales			3253425	
Adjusted Sales Factor	.514233%			
Property Factor	.446912%			
Payroll Factor	.413860%			
Total	1.375005%			
Average	.458335%			
Adjustment to Apportionable Income				
Previously Reported		18274068		
Allocated Business Income		9329635		
Adjusted Apportionable Income		$27603703		
Adjustment to New Mexico Taxable Income				
Adjusted Apportionable Income	$27603703			
Apportionment Percentage	.458335%			
Adjusted N. M. Taxable Income	12651843			
Previously Reported	846222			
Taxable Deficiency		11805621		
Tax Rate		5%		
Tax Deficiency			590281	
Interest @ 1/2% per month for 8 month(s)			47580	
Total Amount Due				637861

[EXHIBIT 31]

69a

SUPREME COURT OF THE UNITED STATES

No. 80-1745

F. W. WOOLWORTH CO., *Appellant*,

v.

TAXATION AND REVENUE DEPARTMENT OF THE STATE OF NEW MEXICO

APPEAL from the Supreme Court of New Mexico.

The statement of jurisdiction in this case having been submitted and considered by the Court, in this case probable jurisdiction is noted. The case is set for oral argument in tandem with case No. 80-2015, *ASARCO Incorporated, etc.* v. *Idaho State Tax Commission.*

October 5, 1981